

**IN THE UNITED STATES DISTRICT COURT
FOR THE EASTERN DISTRICT OF NEW YORK**

JBRICK, LLC, a Florida Limited Liability Company,)	
)	
Plaintiff/Counterclaim)	
Defendant,)	
v.)	
)	Civil Action No. 1:21-cv-02883-HG-CLP
CHAZAK KINDER INC., a New York Corporation, CHAZAK DISTRIBUTION, INC., a New York Corporation,)	
YAACOV SCHWARTZ, an individual)	
and MARAV USA, LLC, D/B/A BINGO)	Judge: Honorable Hector Gonzalez
WHOLESALE, a New York Limited Liability Company,)	
)	
Defendants/Counterclaim)	
Plaintiffs.)	

**DEFENDANTS’ MOTION TO VACATE ORDER DATED
MARCH 15, 2024 (DKT. 112) AND OPPOSITION
TO JOINT MOTION TO EXTEND TIME TO COMPLETE MEDIATION**

Defendants are required to file this Motion and Opposition to what Plaintiff improperly represented to be a Joint Motion to Extend Deadline to Complete Mediation. In reliance on that improperly filed Motion, this Court entered an Order granting the Motion (Dkt. 112). The Motion to Extend was unilaterally filed by the Plaintiff and misrepresents that the Defendants joined in the Motion. Plaintiff, and its counsel, filed the Motion knowing that Defendants did not agree to the filing.

Plaintiff’s counsel filed the Motion at 3:52 p.m. on March 15, 2024. At 3:05 p.m., Defendants’ counsel notified Plaintiff’s counsel by email, specifically stating: “You [do] not have my approval to file the Motion on mediation.” In that email, Defendants’ counsel notified Plaintiff’s counsel that he intended to file a Motion to Enforce the Settlement Agreement entered between the parties on March 5, 2024. The settlement was reported and docketed on March 6, 2024 by the mediator.

In an apparent rush to the courthouse, Plaintiff's counsel intentionally ignored Defendants' counsel's objection, signed counsel's name without permission, and filed the instant Motion to Extend, again misrepresenting that Defendants had joined in that Motion.

On March 5, 2024, the parties agreed on the terms of a settlement and reported their agreement to the mediator. Thereafter, Plaintiff simply changed his mind and no longer wished to settle the matter.

It would appear that Plaintiff's counsel has simply tried to win a race to the courthouse, having been advised of Defendants' intent to file a Motion to Enforce the Terms of the Settlement. In doing so, he intentionally misrepresented Defendants' consent to that Motion. This Court apparently relied on the misrepresentation and granted Plaintiff's unilateral Motion believing that Defendants had joined in that request. Defendants' counsel did not authorize Plaintiff's counsel to add his name and signature to the Motion.

The actions of Plaintiff's counsel violates Rule 11 Fed. R. Civ. P. for making "factually misleading" representations. In addition, 28 USC §1927 has been violated by counsel's unreasonable and vexatious actions which has now multiplied the proceedings and caused not only expense to Defendants, but a needless waste of judicial time and resources.

WHEREFORE, Defendants respectfully request that the Court vacate the Order (Dkt. 112) granting the purported Joint Motion to Extend Time, and deny or strike Plaintiff's improperly filed Motion. In addition, Defendants' ask this Court to enter an appropriate sanction under Rule 11 and 28 U.S.C. §1927, and order such other relief as the Court deems proper and just.

Respectfully submitted,

Dated: March 15, 2024

/s/William L. Niro

Matthew De Preter, *Pro Hac Vice*

William L. Niro, *Pro Hac Vice*

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Attorneys for Defendants

CERTIFICATE OF SERVICE

I hereby certify that on March 15, 2024, I electronically filed the foregoing with the Clerk of the Court for the United States District Court for the Eastern District of New York using the CM/ECF system, which will send notification of such filings to all counsel of record.

/s/William L. Niro

Attorney for Defendants